

## **Attachment 8**

### **SITE ACCESS AND CONFIDENTIALITY AGREEMENT**

This SITE ACCESS AND CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into on this \_\_\_th day of March, 2006 by and between the Sierra Club and Natural Resources Defense Council ("Intervenors") and AK Steel Corporation ("AK Steel").

The purpose of this Agreement is to set forth the terms and conditions upon which AK Steel will grant Intervenors access to the Facility, as that term is defined in the Consent Decree, for the specific, limited purposes set forth Paragraph 78 (a)(ix) of the Consent Decree. The provisions of Section XX (Covenant Not to Sue of Defendant) of the Consent Decree do not bar actions taken by AK Steel to enforce the terms of Attachment 8.

1. Access to the Facility does not convey any right, title, easement, or interest of a permanent nature in the Facility to the Intervenors or any other person or entity. Intervenors' access to the Facility shall be limited in time and location coinciding with site access provided to Government Plaintiffs. Intervenors shall not use or possess any cameras or video recording devices at the Facility. Intervenors are not granted the right to take samples on the property, except for split samples pursuant to Paragraph 78(d) of the Consent Decree. Nothing herein shall be construed to allow Intervenors or Intervenors' technical expert to perform any actions at the Facility other than the activities specifically described in Paragraph 78(a)(ix) of the Consent Decree.

2. AK Steel only grants access to one named technical expert and one alternate technical expert (collectively, "Intervenors' technical expert") in the event the named technical expert is unavailable. Only one technical expert for the Intervenors can visit the Facility at a time. The Intervenors' technical expert shall be retained by the Intervenors at their sole expense. Such technical expert shall adhere to the specific safety and training requirements as provided in Exhibit A to this Attachment 8. Proof of the necessary accreditation shall be provided to AK Steel at least 20 business days prior to the first site visit by the technical expert. AK Steel shall provide notice of any accreditation deficiencies not later than 10 business days after receipt by AK Steel of any proof of accreditation. Any subsequent renewals obtained prior to the Completion of Work shall be provided to AK Steel upon receipt. AK Steel reserves the right to refuse access to any technical expert retained by the Intervenors if it determines in good faith that the technical expert does not possess the required accreditations and training to be on the property, or that the technical expert has an actual or perceived conflict of interest with AK Steel. To the extent Intervenors' primary technical expert is not available to observe a listed activity, an alternate technical expert may attend the observation activity, provided that the provisions of this Paragraph are met with regard to the alternate technical expert.

3. Intervenors' technical expert shall adopt and enforce sound and accepted safety practices in accordance with the safety practices and rules of AK Steel including, but not limited to, the mandatory requirements of Personal Protective Equipment as required by AK Steel's safety department. It shall be the responsibility of Intervenors' technical expert to become familiar with and require strict adherence to the safety practices and rules of AK Steel. Intervenors acknowledge receipt of the AK Steel Safety and Health Rules and Instructions. Any violation of the safety practices and rules by Intervenors' technical expert or any other violation of the terms of this Agreement shall be grounds for immediate removal from the Facility. In the event that additional safety requirements are identified by AK Steel during the term of this Agreement, AK

Steel agrees to not impose upon Intervenor's technical expert any safety requirement in excess of the same requirements imposed upon AK Steel's employees, contractors or service providers.

4. Intervenor's technical expert agrees to fully comply with all applicable laws, ordinances, rules, and regulations of any state, county, municipality, or other governmental, unit or agency. Intervenor and Intervenor's technical expert agree to joint and severally indemnify and save harmless AK Steel from any and all damages occasioned by the failure of Intervenor's technical expert to fully comply with the provisions of this Paragraph.

5. **Indemnity.**

a. Intervenor and Intervenor's technical expert shall jointly and severally indemnify, defend and hold harmless, AK Steel, any of its subsidiaries, or affiliates, and any of its or their employees, workmen, servants, or agents ("Indemnified Parties") of and from any loss, cost, damage or expense arising from:

(1) any and all claims which may be made against any Indemnified Parties by reason of bodily injury or death to person, or damage to property, including pollution liability claims of any nature arising out of spills or releases on-site or off-site, suffered by any person, firm, corporation, or other entity, primarily caused by any act or omission of the Intervenor or Intervenor's technical expert;

(2) any and all damage to the property of any Indemnified Parties, including but not limited to, property occupied or used by or in the care, custody or control of AK Steel, primarily caused by any act or omission, of the Intervenor or Intervenor's technical expert; and

(3) any and all claims which may be made against any Indemnified Parties by reason of bodily injury or death to person, or damage to property (except for injury, death, or damage caused by the sole or primary negligence, gross negligence or willful misconduct of any Indemnified Parties) suffered by the Intervenor or Intervenor's technical expert, agents or employees, notwithstanding the application of the provisions of any applicable state Workers' Compensation law or statute.

b. The Indemnified Parties shall promptly notify Intervenor and Intervenor's technical expert in writing of any claim against Indemnified Parties for which indemnification will or could be sought pursuant to this Agreement. In addition, Indemnified Parties shall give Intervenor and Intervenor's technical expert such information and cooperation as they may reasonably request with respect to all such claims.

c. With respect to any proceeding for which Indemnified Parties notify Intervenor and Intervenor's technical expert in writing of the commencement thereof: (1) Intervenor and/or Intervenor's technical expert shall be entitled to participate at their own expense; (2) Intervenor and/or Intervenor's technical expert may assume the defense thereof; and (3) Intervenor and/or Intervenor's technical expert shall not be

liable to Indemnified Parties under this Agreement for any amounts paid in settlement of any action, claim or proceeding effected without the written consent of Intervenor and Intervenor's technical expert. Indemnified Parties reserve the right to reasonably conclude that there may be a conflict of interest between Intervenor and/or Intervenor's technical expert on the one hand and Indemnified Parties on the other hand in the conduct of the defense of such action.

d. No indemnity pursuant to this Agreement shall be provided by Intervenor or Intervenor's technical expert: (1) for damages that have been paid directly to Indemnified Parties pursuant to an insurance policy or any other means for any act or omission related to this Agreement; (2) with respect to remuneration paid to Indemnified Parties if it shall be determined by a final judgment or other final adjudication that such remuneration was in violation of law; (3) on account of any conduct of Indemnified Parties which is finally adjudicated to have been intentional misconduct or a knowing violation of the law; or (4) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

The provisions of this Paragraph shall survive termination of the Consent Decree.

6. Intervenor and Intervenor's technical expert shall maintain as confidential and shall not disclose to any person any information or observations learned at the AK Steel property that (a) do not concern the Work required to be performed under the Consent Decree, regardless of whether the information or observation would relate to confidential business information entitled to protection from public disclosure subject to the requirements of 40 CFR Part 2 and O.A.C. 3745-49-03 and 3745-49-031; or (b) relate to the Work required to be performed under the Consent Decree but that constitutes raw or unvalidated data or confidential business information entitled to protection from public disclosure subject to the requirements of 40 CFR Part 2 and O.A.C. 3745-49-03 and 3745-49-031. The review of raw or unvalidated data by Intervenor's technical expert shall be governed the applicable terms of the Consent Decree. The provisions of this Paragraph shall survive the termination of the Consent Decree.

7. Intervenor or Intervenor's technical expert shall maintain, at all times during the Work, insurance in at least the following amounts: (i) Workers' Compensation – statutory; (ii) General Liability Insurance – (a) Bodily Injury Property damage - \$1,000,000 per occurrence, (b) Annual General Aggregate - \$2,000,000, (c) Personal and Advertising Injury - \$1,000,000 per person; (iii) Contractor's Pollution Liability Insurance - \$1,000,000 per loss/\$2,000,000 annual aggregate; and (iv) Automobile Liability Insurance - Intervenor or Intervenor's technical expert shall maintain automobile liability insurance at a minimum at the state-mandated minimum coverage requirements and shall, upon request from AK Steel, provide proof of such insurance. Insurance shall be written on an "Occurrence Coverage Basis. Such insurance, within the terms and conditions of the policy, shall specifically cover liability assumed under Paragraph 5 of this Agreement; regardless of whether the indemnification obligation giving rise to such liability is found to be void or otherwise unenforceable due to Worker's Compensation immunity or other grounds. In addition, such insurance shall include AK Steel as an additional insured using ISO Forms CG 20 10 10 01 and CG 20 37 10 01 with respect to claims arising out of activities performed pursuant to or incidental to this Agreement. It is further agreed that the coverage

afforded the Indemnified Parties shall be primary insurance for the Indemnified Parties with respect to claims arising out of activities performed pursuant to or incidental to this Agreement. If the Indemnified Parties have other insurance which is applicable to the claim, such other insurance shall be on an excess basis and not contributory. Intervenor's technical expert will provide evidence or certificates of insurance meeting these terms to AK Steel before Intervenor's technical experts first visit to the Facility. All such insurance shall provide that thirty (30) days notice will be given to AK Steel before any such insurance is canceled.

8. AK Steel and the Intervenor reserve all causes, rights of action and defenses that each may have against the other and against third parties relating to the Work required under the Consent Decree and the AK Steel property. The provisions of this Paragraph shall survive termination of this Consent Decree.

9. Any modification of the terms of this Agreement must be in writing and signed by the parties.

10. This Agreement may be executed in any number of counterparts, and if so executed, shall be effective as against each of the respective parties when that party has executed at least one such counterpart.

11. Any technical expert retained by the Intervenor shall indicate acceptance with the terms and conditions of this Agreement in writing.

AK STEEL CORPORATION

By:\_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_

SIERRA CLUB

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NATURAL RESOURCES DEFENSE COUNCIL

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A**

### **Safety and Training Requirements**

SHIELD training card (6-hour health and safety training program administered by SHIELD for AK Steel. This training is specific to the Facility.)

Initial OSHA 40-hour training certificate (Hazardous Waste Site Operations training)

Current 8-hour annual refresher training certificate for Hazardous Waste Site Operations

Copy of annual medical clearance

Respirator fit test certificate (Respirator fit testing will be required only if Intervenor's technical expert does not already have certification)

Triennial Standard First Aid Certificate

Valid Driver's License